

No 29.

1633. February 12.

FORBES *against* FORBES.

A BOND, by an interdicted person, was reduced, for want of the consent of those to whom he was interdicted, though one of them signed as cautioner, and the other promised to subscribe the bond.

*Fol. Dic. v. i. p. 480. Durie.*

\* \* \* This case is No. 50. p. 5673, *voce* HOMOLOGATION.

No 30.  
Voluntary interdiction falls by the death of the interdicters.

1708. December 8.

HEPBURN *against* HEPBURN.

THE Lord Justice Clerk reported Hepburn against Hepburn. Patrick Hepburn of Nunraw, having denuded himself of the fee of his estate to his eldest son John, who dying unmarried, his brother Patrick succeeds to him as heir; and, being a weak man, contracts sundry debts, and falls into other extravagancies; for which being incarcerated in the tolbooth of Berwick, his father takes a re-disposition of the estate from him in *anno* 1681; and, paying his debts, brings him out of prison; but this disposition being reduced, as then standing interdicted, and the interdicters not consenting thereto, there is a new disposition and ratification obtained from him in 1704, in favour of old Nunraw his father, who thereon makes a new tailzie of his estate, wherein he passes by his son Patrick, and his eldest son, and gives it to the second, as pleasing the grandfather best; and, failing of him, to the eldest; and, after him, to one John Hepburn of Swinton, and his heirs; and, failing them, to any the said John should nominate of the name of Hepburn under his hand. Of this tailzie young Nunraw raises a reduction, upon these reasons, that his father was notoriously known to be a weak man, and twice interdicted, and so his ratification not to be regarded; and for his grandfather's tailzie, he was evidently imposed on to pass by him, without any offence given him, (seeing exheredation should be *cum elogio*, giving a reason,) and to put the power of all in the hands of Hepburn of Swinton, a stranger, to nominate and substitute whom he pleased, is a thing that, *ex ipsa facie*, spoke a circumvention. *Answered*, It is true, Patrick was interdicted to five, whereof three were a quorum; but at this time of his ratification in 1704, the interdiction was expired and fallen, by the death of the quorum, there being only two in life, so that he was emancipated from the fetters of the interdiction, and was at absolute freedom to dispoise his estate at his pleasure, especially where it returned to his father, the source from whence it came; and *esto* he were subject to levity and weakness, he is never yet declared fatuous, furious, nor idiot; and as to the grandfather's tailzie, he being fiar, might convey it in what terms he thought fit; and John Hepburn is a relation descended of the family. *Replied*, *Esto* the interdiction had ceased by the death of the quorum, yet this did not make him one jot the wiser, but he con-

tinued still the fool he was before, and needs the same remedies, especially considering the interdiction bears, it was to endure all the days of his lifetime; and law is bound to protect such people against surprises to their manifest lesion. THE LORDS thought there was a difference betwixt a judicial and a voluntary interdiction; for where it is judicial, it cannot be taken off but *causa cognita*, that he is turned *sciens et prudens*; which is not requisite in voluntary ones; and though the levity here continued, yet the interdiction ceasing by the death of the quorum, they found him a free man, and sustained his ratification, and assoilzied from the reduction. *Durum, sed ita lex scripta.*

*Fol. Dic. v. 1. p. 480. Fountainball, v. 2. p. 469.*

\*.\* Forbes reports this case:

PATRICK HEPBURN of Nunraw, having voluntarily interdicted himself to five persons, or any three of them during all the days of his lifetime, and thereafter disposed his estate of Nunraw to Patrick Hepburn his father, whereof the father, after the death of three of the interdictors, obtained a ratification and a new disposition from young Patrick, and re-disposed the estate to Francis Hepburn his grand-child, young Patrick's second son, passing by Patrick his elder brother; this elder brother (who several years after procured another disposition from his father young Patrick) raised reduction against the said Francis Hepburn of the right made to old Patrick, upon this ground, that it was granted by a person under interdiction, without consent of his interdictors.

*Answered* for the defender; The defect of the first disposition was supplied by the ratification and new disposition made after the interdiction fell by the death of the quorum of interdictors. So in a case betwixt Mr Roger Hepburn and Nunraw, February 22. 1704\*, the LORDS repelled a reason of reduction of a bond *ex capite interdictionis*; in regard there was not a quorum of the interdictors alive when the bond was granted.

*Answered* for the pursuer; Though a person after majority might ratify deeds done in his minority, because the impediment of nonage is then removed; a man interdicted for notour levity and weakness could not, so long as notoriety of his weakness remained, even after the death of the quorum of interdictors, do any deed to carry away his estate out of the natural channel of succession. *2do*, Whatever might be pleaded for the falling of an ordinary interdiction by death of a quorum of interdictors; the interdiction in question must be understood to subsist, without respect to the failing of the quorum; because, by the special tenor thereof young Patrick Hepburn was interdicted to the persons therein named during all the days of his lifetime.

THE LORDS repelled the reason of reduction, in respect of the ratification and new disposition granted by young Patrick Hepburn after the interdiction was fallen by the death of the quorum of the interdictors. Nor would the LORDS, January 5. 1709, sustain prodigality and weakness *per se* as a reason to reduce

No 30. the said ratification and new disposition ; seeing prodigals and weak persons were not interdicted *ipso jure* by the civil law, but only *officio judicis* upon a cognition ; and our law acknowledgeth only two sorts of interdiction, viz. voluntary and judicial.

*Forbes, p. 286.*

1710. November 24.

THOMAS LAW, SON to WILLIAM LAW Taylor in Jedburgh *against* THOMAS TURNBULL of Firth.

No 31. IN the action at the instance of Thomas Law, against Thomas Turnbull, as representing his father, for payment of a bond granted by him to the pursuer's father ; the LORDS were clearly of opinion, that a bond granted by an interdicted person without consent of his interdictors, could not be supported as valid by their subscribing witnesses to it.

*Forbes, p. 442.*

1761. February 5.

DONALD CAMPBELL *against* COLIN CAMPBELL.

No 32. The Lords so far determined the question whether an interdictor can acquire rights relating to the interdicted person's estate, that they allowed a proof that he had acted under the interdiction ; which would imply that they considered interdictors in the same point of view with tutors, factors, &c.

DONALD CAMPBELL had a valuable wadset from Mr Campbell of Shawfield, the redemption of which was suspended to the term of Whitsunday 1760. He had also a tack from Shawfield which was to expire at the same time.

Being a weak facile man, he interdicted himself to some of his relations ; Colin Campbell his brother was one of them.

Twelve years before the expiry of the wadset and tack, Colin Campbell applied to Shawfield, and got from him a grant of both.

Donald, with concurrence of his other interdictors, brought an action against Colin, concluding, that the benefit of the transaction should be communicated to him.

*Pleaded* for Donald ; Rights acquired by tutors, curators, factors, named by them, and in general, by all factors, agents, and trustees, relating to the person's lands for whom they act, accresce to him ; and the same rules should take place with regard to rights acquired by interdictors.

*Answered* for Colin ; There is no general trust between interdictors and the person interdicted. The interdictors have no management of the affairs of the interdicted person ; they have no accounts to render of their administration ; the trust reposed in them reaches no further than the heritable estate ; all that is expected of them, or undertaken by them, is to adhibit their consent in token of their approbation of the acts and deeds of the interdicted person. No-